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General Assembly
Sixty-second session
Agenda items 17 and 18

The situation in the Middle East

Question of Palestine

Security Council
Sixty-third year

Identical letters dated 11 February 2008 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

Even before the ink has dried on the letters I sent to you in recent days regarding Palestinian terrorism, yet another vicious and unimaginable terrorist attack has been carried out against Israeli civilians — and children, in particular.

Late Friday evening, 8 February, during a rocket barrage fired by Palestinian terrorists in the Gaza Strip, two brothers were seriously wounded by a Qassam rocket in their hometown of Sderot. Doctors were forced to amputate part of the left leg of one of the boys, eight-year-old Osher Tuito. His 19-year-old brother, Rami, was also badly injured in the terrorist attack. Osher, who dreamed of becoming a soccer player, does not yet know that he has lost one of his legs. He remains under total sedation so he does not suffer from the severe pain.

The dire consequences of these attacks are further impressed on us when we consider that they took place against the backdrop of the Security Council's deliberations on children and armed conflict, to be held on 12 February. This tragic terrorist attack on the eve of such a debate underscores the gravity of the Council's meeting on such a crucial issue.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda items 17 and 18, and of the Security Council. An identical letter has been sent to the President of the Security Council.

(*Signed*) Dan **Gillerman**
Ambassador
Permanent Representative

08-23665 (E) 130208

United Nations A/62/689

General Assembly

Distr.: General
11 February 2008

Original: English

Sixty-second session
Agenda item 108
Measures to eliminate international terrorism

Letter dated 3 December 2007 from the Permanent Representative of Germany to the United Nations addressed to the Secretary-General

I am pleased to inform you about the outcome of the high-level seminar entitled "Towards a Comprehensive Convention on International Terrorism", held in Berlin on 11 and 12 September 2007 at the German Institute for International and Security Affairs, with the support of the Federal Foreign Office.

The seminar is a contribution to the ongoing negotiations on the draft comprehensive convention on international terrorism. The United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288) also emphasizes the resolve of States Members of the United Nations to "make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism".

The seminar analysed the draft comprehensive convention on international terrorism from a broader academic, legal and political perspective. The seminar brought together high-level Government officials from negotiating parties for the convention and renowned scholars in the field of international law, who provided valuable input on various legal issues.

The summary of the seminar, as well as legal analysis provided at the seminar, are attached for your information (see annex).

I should like to request that the present letter and its annex be circulated as a document of the General Assembly under agenda item 108.

(*Signed*) Thomas **Matussek**
Ambassador

08-23590 (E) 270208

Annex to the letter dated 3 December 2007 from the Permanent Representative of Germany to the United Nations addressed to the Secretary-General

SWP

German Institute for International and Security Affairs

Towards a Comprehensive Convention on International Terrorism
High-Level Seminar, Berlin, 11-12 September 2007

Summary Report*

Part I: Why do we need a comprehensive convention on international terrorism? - Political views

In principle, there was a broad consensus among the participants of the seminar that a comprehensive convention on international terrorism was urgently needed, not least because terrorism presented a direct threat to the values of the United Nations. In view of the existing conventions against specific acts of international terrorism the questions were posed as to how effective these conventions have been so far in aiding the prosecution of terrorists, and what would be the added value of a comprehensive convention.

In this context, a participant held that the comprehensive convention could not only help to fill gaps within the system of the different conventions but also serve as a more substantiated basis for enhanced international cooperation. Several scholars stressed the obligation of states to cooperate not only in the prosecution but already in the prevention of terrorist acts. One of the scholars noted the fact that the convention also provided minimum standards for the treatment of alleged offenders.

Besides these practical aspects the symbolic value of a comprehensive convention was discussed. While some participants were of the opinion that no further political symbol was needed, others stressed that the existence of a common definition of terrorism agreed to by the UN General Assembly would be a great achievement. A participant pointed out that terrorism affected ..southern" countries at least to the same extent as it affected ..northern" countries.

* Prepared by the German Institute for International and Security Affairs (SWP) on demand of the participants of the seminar. This summary report does not provide for a complete reproduction of the discussions held during the seminar. It is not meant to endorse or reject any of the positions and proposals herein reproduced. The numbering of draft Articles of the comprehensive convention cited in this summary report follows UN Doc. A/57/37.

During a brief discussion of the notion of "state-terrorism" one scholar mentioned the difference between crimes committed by organs of states and state sponsored terrorist acts.

Finally, it was recalled by several participants that the main divergences in the present negotiations were linked to the central question of what kind of activities should be exempted from the scope of application of the comprehensive convention. Some participants were of the opinion that a new convention deserved the attribute „comprehensive" only if it included individuals, groups and state actors and that the offences should be called terrorism regardless of the perpetrator. This touched upon the complex issue of delimiting the scope of application of the convention vis-a-vis international humanitarian law and other rules of international law.

Part II: Tackling the remaining legal issues

Session 1: The relationship between the comprehensive convention and international humanitarian law

At the beginning several scholars pointed out that the central problem consisted in the fact that, as a consequence of the broad definition of offences in draft Article 2 of the comprehensive convention, a situation may be covered by the convention as well as by international humanitarian law at the same time. One of the basic challenges with regard to delimiting of the scope of application of the convention was to exempt certain acts governed by international humanitarian law without importing the complexities of that law into the convention. However, one participant held that some overlap between the two regimes was inevitable because terrorism often originated in situations of armed conflict.

One of the participants recalled that not all states were bound by the Additional Protocols to the Geneva Conventions and cautioned against enforcing such rules through a comprehensive convention on international terrorism.

Several participants objected to adding more language to the draft. Otherwise the text would become even more confusing. One of the participants stressed that an ambiguous convention would pose serious risks.

Regarding the exemption of certain activities from the comprehensive convention, one of the scholars emphasized that as far as the activities of armed forces during an international armed conflict were concerned, their activities were indeed fully governed by international humanitarian law so that an exclusion of such activities from the convention would not result in a carte blanche for committing acts considered offences by draft Article 2 of the convention. While some of the participants expressed their

concern that an exemption of armed forces could lead to a situation of impunity, others stressed that such an exemption would simply mean that certain activities would not fall under this particular convention but would not be precluded from criminal prosecution under the rules of international humanitarian law, in particular in the case of war crimes.

With regard to non-international armed conflicts one of the scholars held that there were no clear criteria as to when situations of internal disturbances and tensions crossed the threshold of a non-international armed conflict. Thus, it was questionable at what stage after the outbreak of internal violence international humanitarian law would come into play and would supersede the application of the comprehensive convention. Another scholar added that below the threshold of armed conflict there was only national law and human rights law applicable.

Furthermore, it was noted that it remained unclear whether the term "armed forces during an armed conflict" would also include members of armed groups belonging to a non-state party during a non-international armed conflict. Several experts were of the opinion that the term "armed forces" could also include non-state actors. According to this view, it could not be argued that by using the term "armed forces" the exemption would be limited to state actors.

One of the scholars expressed the opinion that the proposed alternative term "parties to a conflict" would not be helpful with regard to a clear cut delineation since the notion itself was not sufficiently clear at least under the law of non-international armed conflict. By contrast, it was stressed by a number of participants, that the term "armed forces" was a rather well defined term under international humanitarian law.

One of the scholars put forward that a major problem consisted in the fact that the activities of actors who did not fall under the definition of armed forces were not as comprehensively regulated by international humanitarian law as the activities of armed forces. For example, it was not clear under which conditions an individual could commit a war crime.

It was also noted that the direct participation of civilians in hostilities was not unlawful per se but - at the same time - was not privileged either under international humanitarian law. In this regard some participants expressed their concern that the comprehensive convention could undermine the status quo existing under international humanitarian law and create new legal asymmetries between states and non-state actors.

One of the scholars proposed to delimit the scope of application of the comprehensive convention by applying the principle of lex specialis and to completely delete

paragraph 2 of draft Article 18 of the convention. The two regimes - the convention and international humanitarian law - would then, in principle, be applicable side by side. A double criminalization of certain activities falling under both regimes would not pose any serious problems. However, any conflict between the laws would then have to be solved by applying the lex specialis rule with international humanitarian law prevailing. In particular he proposed the following formula "Any act which is justified under the rules of international humanitarian law, shall not be covered by the scope of application of this convention." However, as other scholars noted, this apparently easy solution entailed serious problems with regard to the practical applicability of the convention since any prosecutor, prior to initiating a prosecution, would have to examine whether the activity in question was indeed justified under international humanitarian law.

Some participants questioned whether there was a need for exemptions at all. According to this view, certain activities should be unacceptable regardless of who committed these acts.

Session 2: The relationship between the comprehensive convention and other rules of international law

One of the scholars emphasized that the definition of "military forces of a State" in draft Article 1 paragraph 2 of the comprehensive convention referred to national law and thereby contained an element of self-characterization. According to this view, for example, secret agents who according to relevant national law formally belonged to the military would operate outside the convention. Furthermore, as another scholar pointed out, it was a widespread phenomenon that the military was called in against riots, rebellion or other situations below the threshold of armed conflict. Another scholar made the proposal to specify paragraph 3 of draft Article 18 in order to cover activities undertaken by the military forces of a state in the exercise of their official duties during peacetime.

The opinion was expressed that it was not sufficiently clear what was meant by the term "other rules of international law". In this context it was pointed out by one of the scholars that the activities of military and police forces were at all times governed by the international law of state responsibility. Therefore, any activities of such forces could be excluded from the comprehensive convention. Some participants expressed the concern that this could lead to the creation of a situation of impunity. In addition, according to one of the participants, the exemption of certain actors was problematic from an ethical perspective since different actors would be treated differently although they may have committed an equivalent act.

Some participants expressed the opinion that an inclusion of military forces in the scope of application of the comprehensive convention would undermine the willingness of states to participate in peacekeeping operations since soldiers would run the risk of becoming the target subject of an extradition request on the basis of the convention. For this reason it was argued in favor of completely excluding military forces from the convention.

It was repeatedly stated by several scholars that the breadth of draft Article 18 paragraph 3 reflected the breadth of draft Article 2 of the convention. The definition of the offence in draft Article 2, as one of the scholars argued, was almost a description of what armed forces were paid to do. However, it was questioned by another scholar whether armed forces really do act in order to "intimidate a population". As a possible compromise it was suggested to include an unambiguous statement in the preamble affirming that members of armed forces legally could be held responsible for crimes committed but that these are not the subject of the present convention.

Part III: Next steps

As one of the participants noted, the negotiations on the comprehensive convention proved more difficult than in the case of the existing anti-terrorism conventions because the comprehensive convention did not concentrate on specific terrorist activities but on certain results of terrorist activities. Some participants expressed their concern that this could open wide leeway for prosecution and make the application of the convention more unpredictable.

One of the scholars recalled that although there was a widespread consensus that terrorism was to be condemned it was still not agreed that no objective whatsoever could justify the activities defined as offences.

In addition, there seemed to be no consensus on the question whether the draft in its current form provided a space for impunity and non-prosecution.

One participant warned that it was not a function of the comprehensive convention to rewrite international humanitarian law. Thus, it was suggested to modify the preamble accordingly in order to clarify the intention of the convention.

From a more practical point of view it was pointed out by one of the scholars that the comprehensive convention would have to be applied by judges at all levels down to municipal courts and that there was a need for an unambiguous text. However, in view of the diverging standpoints some of the participants advocated a pragmatic approach stating that a perfect text should not be expected. Rather the focus should be directed towards what was achievable.

The following remarks were made by different scholars with regard to specific draft Articles of the comprehensive convention: Regarding draft Article 2 one of the scholars suggested to limit the definition of offences to acts endangering the life and physical integrity of civilians since civilians constituted most of the victims of terrorist attacks. On the other hand it was put forward by a participant that it would be unacceptable to restrict the scope of application of the convention to offences committed against civilians and non-combatants. Instead, the formula would also have to cover terrorist attacks against military forces.

Several participants stressed that the definition in draft Article 2 was the product of difficult negotiations and that there was great reluctance to re-open agreed language. Yet some participants expressed themselves in favor of opening even those sections since, according to this view, nothing was agreed until everything was agreed.

Regarding draft Article 3 one of the scholars observed that the phrase "as appropriate" should be avoided and should be further clarified.

Regarding draft Article 12 it was proposed by one of the scholars to slightly change the word order of the article as follows "[...] including, in particular, international human rights law and the Standard Minimum Rules for the Treatment of Prisoners."

Regarding draft Article 18 paragraph 2 one scholar noted that the activities of armed forces during an armed conflict were always governed by international humanitarian law. Therefore it was proposed to delete the passage "as those terms are understood under international humanitarian law, which are governed by that law".

Another scholar noted that Additional Protocol II to the Geneva Conventions in Article 4 (2) (d) prohibited acts of terrorism. Therefore, it was suggested to include in draft Article 18 paragraph 2 of the comprehensive convention a specific reference: "activities of the armed forces [...] are not governed by this convention, unless they fall under Article 4 (2) (d) of Additional Protocol II to the Geneva Conventions."

Regarding draft Article 18 paragraph 3 it was pointed out by one of the scholars that the term "inasmuch" could mean "because" as well as "to the extent that". It was suggested by several participants for reasons of clarification to replace "inasmuch" by "because". Moreover, it was suggested by one of the scholars to replace the phrase "The activities" by "Other activities" in order to clarify and indicate the connection with the paragraph 2 of the same Article.

Moreover, it was emphasized that draft Article 18 paragraph 3 was to be read in connection with paragraph 4 which should be interpreted with good faith. One participant held that the intention of the newly proposed addition to paragraph 4 of Article 18 (UN Doc. A/62/37) was to emphasize that no impunity was intended for acts

excluded from the comprehensive convention. Thus, the convention did not preclude prosecution of those acts under other laws.

With regard to the new paragraph 5 of Article 18 (UN Doc. A/62/37), it was noted that international humanitarian law was not prejudiced by the comprehensive convention. This paragraph, read together with Article 18 as a whole, should provide guidance for those who would be responsible for its interpretation and application.

Participants agreed that this kind of open exchange under Chatham House rules between key persons for the negotiations of the comprehensive convention and with the input of distinguished scholars was extremely fruitful and contributed to confidence-building between the negotiators. Some participants suggested that further meetings in this or similar formats might be useful in order to break the impasse in the negotiations in New York.

Towards a Comprehensive Convention on International Terrorism
High-Level Seminar, 11-12 September 2007, Berlin

Part II, Session 1
The relationship between the convention and international humanitarian law

*Christian Schaller**

I. Introduction

- International anti-terrorist law must be compatible with other rights, obligations and responsibilities established under international law. One of the most complex relationships in this regard is the interplay between anti-terrorist law and international humanitarian law (IHL) in situations of armed conflict. IHL is specifically designed - for humanitarian purposes - to regulate the conduct of the parties to an armed conflict. Therefore, as a matter of principle an act which is governed by IHL and which is not unlawful under that law must not be treated as an act of terrorism.

- This principle must also be regarded in delimiting the scope of application of a comprehensive convention on international terrorism. The basic challenge, however, is to operationalize this principle. The idea pursued by both draft texts - the coordinator's draft and the OIC draft - is to exempt a priori certain activities from the scope of application of the comprehensive convention which are already governed by IHL. In order to understand the legal and practical implications of this approach it is necessary first to clarify which activities are indeed governed by IHL *in a way that justifies such an exemption* from the comprehensive convention *without creating any legal uncertainties and loopholes* regarding criminal prosecution.

II. Which activities are governed by and are subject to criminal prosecution under IHL?

- I would like to briefly address this question with regard to three categories of actors:
  - o activities of armed forces during an international armed conflict;
  - o activities of armed forces during a non-international armed conflict; and
  - o activities of persons not belonging to the armed forces who directly participate in the hostilities during an international or non-international armed conflict.

1. Activities of armed forces during an international armed conflict

- The term "armed forces" is defined in Article 43 of Additional Protocol I with regard to international armed conflicts. It includes all organized arms groups and units which are under a command responsible to a conflict party for the conduct of its subordinates. As far as Protocol I is applicable also the armed forces of liberation movements within the meaning of Article 1 paragraph 4 of the Protocol are covered.

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- Exempting the activities of armed forces during an international armed conflict from the comprehensive convention certainly does not provide these forces with a carte blanche. Serious violations of the laws and customs of international armed conflict by armed forces are criminalized as war crimes under the Geneva Conventions and Additional Protocol I as well as under the Statute of the ICC and customary international law. These are international crimes which must be prosecuted by all states.

2. Activities of armed forces during a non-international armed conflict

- Serious violations of the law of non-international armed conflict by armed forces are just as well covered as war crimes under international criminal law. However, two other issues are a lot more contentious in this context:

- First, there are no clear-cut criteria as to when situations of internal disturbances and tensions cross the threshold of a non-international armed conflict. At what stage after the outbreak of internal violence does IHL come into play and would supersede the application of the comprehensive convention?

- The second issue is even more problematic: The term "armed forces" is used but not defined under the law of non-international armed conflict. Does it also include non-state organized armed groups? While Additional Protocol II distinguishes between the armed forces of a state, dissident armed forces and other organized armed groups, Common Article 3 of the Geneva Conventions does not contain any such differentiation.

- Since it is also not clear which conditions must be fulfilled by a non-state actor in order to be qualified as a *party* to a non-international armed conflict, it would not be helpful to use the term "parties" instead of the term "armed forces" in order to delimit the scope of application of the comprehensive convention.

3. Activities of persons not belonging to the armed forces

- The activities of persons not belonging to the armed forces during an armed conflict are not as comprehensively and clearly regulated by IHL. Under the law of international armed conflict only members of the armed forces have the right as combatants to participate directly in the hostilities. All other persons are to be considered as civilians. As such they do not enjoy any privileges with regard to taking part in the hostilities.

- In contrast, the law of non-international armed conflict does not grant any such privileges for anyone. Accordingly this body of law does not explicitly distinguish between members of armed forces/combatants and civilians but only between persons taking a direct part in the hostilities and persons who do not participate in the fighting.

- Civilians who take a direct part in hostilities for such time lose their general protection against the effects of the hostilities and may be prosecuted under national law already for the mere participation in combat. This is true with regard to international as well as with regard to non-international armed conflicts.

- What is not clearly settled is the following question: Under which conditions may a civilian commit a war crime? In other words: In which cases are states obliged on the basis of IHL and international criminal law to prosecute - as an international crime - an act of violence committed by a civilian during an armed conflict? One of the fundamental conditions is that the conduct took place in the context and was associated with the armed conflict. This link may be much more difficult to prove in the case of a civilian than it is in the case of a member of the armed forces. Moreover, the person must violate a norm of IHL by which he or she is individually bound. The norms of IHL in the first place address the conflict parties as collective entities. At the same time, every member of the armed forces of a conflict party is automatically bound by these norms. In the case of a civilian this issue deserves closer consideration. A good argument can be made that even civilians are bound to respect the principles of IHL derived from established custom, from the principles of humanity, and from dictates of public conscience. Nevertheless, this formula is still too vague with regard to criminal prosecution.

- I would like to illustrate the problem briefly by an example: Members of a non-state armed group who are militarily organized and operate under a responsible command may qualify as a party to a non-international armed conflict. If they deliberately target civilians there is no doubt that this act constitutes a war crime. But what about a person who belongs to a small cell which is not in any way militarily organized or commanded? And what about a single person targeting other civilians who is not affiliated to any entity? Do these acts also constitute war crimes just because they took place in the context of an armed conflict?

III. Conclusion

- Taking into account these uncertainties I suggest to draft the exemption in Article 18 paragraph 2 with utmost restraint and as narrow as possible. In particular the formula should avoid any terms which are not clearly settled under IHL. The comprehensive convention must not import the complexities and uncertainties inherent in IHL. And it must not promote a redefinition of certain IHL terms and rules.

- To be clear on this: An activity which is not exempted a priori from the comprehensive convention does not automatically constitute an offence within the meaning of draft Article 2 of the convention. This provision itself requires that the act is committed "unlawfully".

- The direct participation in the hostilities by a person who is not a member of the armed forces in an international armed conflict is not unlawful as such under IHL. It is just not privileged. Such person, therefore, would only commit an offence within the meaning of

the comprehensive convention if its action is to be considered unlawful under another specific legal prohibition, for example, if the conduct constitutes a war crime - which may be questionable in some cases as we have seen -, a crime against humanity, or an offence within the meaning of any other of the 13 international conventions against terrorism. On the other hand, however, it is not clear what is exactly meant by the term "unlawful". Does the unlawfulness of an act have to result from a prohibition under international law or could even a national prohibition render an act unlawful within the meaning of draft Article 2 of the comprehensive convention?

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The Relationship between the Comprehensive Anti-Terrorism Convention and International Humanitarian Law (IHL)

Christian Walter, Münster

Statement at the high-level seminar: Towards a Comprehensive Convention on International Terrorism, Berlin, 11-12 September 2007

I. Introduction

Although a substantial part of the Draft Comprehensive Convention is uncontroversial the negotiations have come to deadlock. The most controversial issue relates to what was in the former drafts Article 18 and has now become Article 20. This Article deals with the relationship between the Convention and International Humanitarian Law (sect. 2) and International Law in general (sect. 3). It is not always easy for an outsider, who has followed the negotiations closely from a scientific view, but has never been actively involved in the process, to understand the underlying controversies to their full extent. I apologize therefore right at the beginning for any incompleteness in my analysis of the interests involved and for possible shortcomings of my conclusions.

My general reading of the deadlock is that the negotiations have run into a trap which has been a major obstacle to international negotiations on combating terrorism from the 1960ies onwards. The issue behind Article 20 sect. 2 is the possible application of the convention to action taken by persons which some may qualify as "freedom fighters" and the issue behind Article 20 sect. 3 is the question of how to deal with state terrorism. This first panel is limited to the first question and I will limit myself to proposals concerning the relationship between the Convention and

International Humanitarian Law (IHL). Nevertheless, it seems important to me to stress that the two issues, although relating to distinct legal questions, are substantially linked with each other and it may be that a solution to the deadlock can only be found by tackling the issues jointly.

II. The Concept of Current Article 20 Sect. 2

The two different proposals existing at the moment do not differ as to their basic conceptual approach. Both, the proposal by the former co-ordinator and the proposal presented by the OIC countries exclude the application of the Convention when norms of IHL do apply. They differ in defining the scope of applicable norms of IHL. While the former co-ordinator refers to "armed forces during an armed conflict", the OIC wording is broader in referring to "parties" to an "armed conflict" and expressly addresses the situation of foreign occupation. The background for this difference is obvious and needs no further explanation, although it should be mentioned that some of the concerns of the OIC countries may be met by the application of Art. 1 (4) First Additional Protocol to the Geneva Conventions (AP1).

III. Lex specialis as an Alternative

Since we have been encouraged to suggest new approaches and solutions I want to take up a criticism of the general approach which I have already voiced elsewhere and try to develop a different overall approach to the relationship between the Convention and IHL.

In contrast to the current concept of two different legal regimes (either the rules of international humanitarian law apply or anti-terrorist law), I propose a solution on the basis of *lex specialis* on a case by case basis. To my mind such an approach, which is also already present in new proposals concerning the addition of a Article 20 section 5, has a number of advantages. The most important among them is a consistent definition of terrorist acts. It also is in line with the general practice of the General Assembly of the United Nations, which since 1994 has condemned "wherever and by whomever committed" without excluding situations of armed conflict.

Are there any reasons to avoid the application of anti-terrorist laws in armed conflict? An issue of major concern is that privileges granted by international humanitarian law should not be criminalized as terrorist acts. Furthermore there are fears that uncertainties relating to the laws of war (especially the laws of non-international armed conflict) may enter into anti-terrorist legislation. This could be viewed as incompatible with the general principle that criminal law should be clear and unambiguous. These two major criticisms will be addressed in the following, before the major advantages of relying only on *lex specialis* in order to de-termine the relationship between the convention and international humanitarian law will be summarized.

1. Double Criminalization

In many instances the acts qualified as terrorist acts under the convention will constitute "grave breaches" of international humanitarian law. As such they may and even must be qualified as criminal acts and be prosecuted. It is true that in this area an additional qualification as terrorist acts does not add much as far as actual legal consequences are concerned. But a double qualification as "grave breach" and as terrorist act does not present any legal problems either.

However, it allows qualifying the respective acts as "terrorist" irrespective of the concrete circumstances of their commission and thus provides for a consistent concept of terrorist acts.

The point may be illustrated by the different stages of internal conflicts. For common Art. 3 to the Geneva Conventions to be applicable the threshold of an "armed conflict" needs to be transgressed. The consequence of separating anti-terrorist law and international humanitarian law is that one and the same criminal act is qualified as terrorism as long as the threshold of "armed conflict" has not been reached, however, the qualification turns doubtful in the gray area around the threshold (i.e. when it is debatable whether or not it is possible to speak of an armed conflict) and it is finally definitively excluded once the threshold has been passed. Such a variable definition should only be used in the absence of better concepts. It is submitted that applying the *lex specialis* principle when individual rules collide is such a better concept.

Another, and perhaps the most important advantage of the lex specialis principle is, that it avoids any debate on privileges for "state terrorism" or freedom fighters. The acts are qualified as "terrorist" wherever and by whomever committed, even in cases of armed forces acting in an (internal or international) armed conflict.

2. Ensuring the Integrity of International Humanitarian Law

This is the area where the principle of *lex specialis* must apply. Acts which are justified by the rules of international humanitarian law should be excluded from the scope of application of the convention.

Examples:

1) An attack against a military computer system which may be a lawful target under the rules of international humanitarian law, could fall under an extensive definition of terrorism under Art. 2 of the Convention.

2) An attack against an ammunition factory, situated closely to a housing area, may be a law ful target under Art. 52 sec. 2 AP1 (effective military contribution of the object for the cam paign of Party B and a definite military advantage resulting from the attack for Party A). While the attack might have been carried out in a proportional way (Art. 51 sec. 5 lit. b AP1) and under all feasible precautions (c.f. Art. 57 sec. 2 lit. a) ii AP1) it may nevertheless cause great fear among the civilian population and thus could fall under Art. 2 no. 1 lit. b) of the draft convention.

3) Occupying forces carrying out a raid to find and arrest criminals in order to uphold the public safety (art. 43 Hague Convention IV of 1907) enter a muslim civilian housing area by night. Some male civilians, who want to protect the honesty of their wifes, who should not be looked at by western soldiers without their *hijabs,* are shooting at the occupying forces to make them withdraw. During this chaotic situation the occupying forces in self defence cause serious bodily harm to some of the armed muslim civilians. This action might have been nec essary and proportionate in order for the soldiers to protect themselves, but nevertheless could cause fear among the civilian population and thus might fall under Art. 2 no. 1 lit. b) of the draft convention.

2. Legal certainty

The proposal made here has already been criticized as endangering important functions of international humanitarian law in that it introduces new elements of criminalization which do not form part of the laws of war. This criticism certainly underlines the importance of qualifying the rules of international humanitarian law as *lex specialis* prevailing in case of conflict. However, it does not require a separation of régimes as provided for in the provisions mentioned. What is required, however, is a clear distinction of terrorist acts. It is submitted that certainty and clarity largely depend on the definition of terrorism as such. In addition to that, the scope of possible justifications under international humanitarian law also has an important influence.

► Example: Crimes according to Art. 8 Rome Statute depend on the element that the acts described in Art. 8 are not justified by provisions of IHL; the operation which has to be done is exactly the same. The only difference is that, in contrast to the Rome Statute, where a single judicial body decides, under the Draft Convention it would be the national Courts of the Member States. It is true, that this entails a certain danger of diverging decisions. However, this danger is imminent in the construction of the convention which does not provide for a centralised enforcement mechanism but relies on the Courts of the Member States. If one looks at Art. 2 of the Draft Convention and the many difficult elements used there (including the word "unlawfully" in the chapeau) it seems inevitable to conclude that in that area the Convention entrusts the national Courts with difficult tasks of interpretation anyhow. The real problem in that area, it seems to me, lies not with the exceptions discussed in Art. 20 of the Draft Convention, but rather with the extensively broad definition in Art. 2 of the Draft Convention.

3. Major Advantages

The qualification of certain acts as terrorism is not legally irrelevant, even when the laws of war apply. The anti-terrorist conventions contain clauses on mutual assistance and cooperation (Art. 12 Convention against Terrorist Bombings; Art. 13 Draft Comprehensive Convention) which would otherwise not be applicable.

The main advantage of applying the definition of terrorism also in times of war is that it adds to its consistency. The Draft Convention would apply to all acts of terrorism, wherever and by whomever committed and thus return to the formula of the General Assembly which has been used from 1994 onwards.

In sum: It is difficult to see, however, why the Convention against Terrorist Bombings and the Draft Comprehensive Convention schematically exclude a whole set of rules without regard to the question of whether they actually contradict each other in a given case. The solution favoured here is that each body of law follows its own logic to the largest extent possible: i.e. the terrorist conventions should apply where the criteria for the definition of terrorism are fulfilled, and the rules of international humanitarian law apply whenever there is a situation of an armed conflict. Acts which must be qualified as terrorism under anti-terrorism law are only excluded to the extent that international humanitarian law provides for a specific justification (as is the case for example with lawful targets ► see above). In all other cases there is no reason, why war crimes which match the criteria for terrorism should not be called and treated as such.

Proposed Draft Wording:

Any act which is justified under the rules of international humanitarian law, shall not be covered by the scope of application of this convention.

High-Level Seminar "Towards a Comprehensive Convention on International Terrorism",
Berlin, 11/12 Sept. 2007

The Relationship between the Convention and other Rules of International Law

Stefan Oeter*

1. Introduction

Terrorism poses a very serious threat to international peace and security. It operates in international networks and threatens any country in the world - nobody and no country, big or small, developed or undeveloped, can isolate itself from its effects. As UN-Secretary-General Kofi Annan expressed it: "Terrorism strikes at the very heart of everything the UN stands for. It represents a global threat to Democracy, the Rule of Law, Human Rights and stability." Most world leaders share this assessment.

We have heard in the first part of this seminar why we need a Comprehensive Convention as a supplementary instrument to the already existing network of specific treaties on combating the threat of terrorism. If we reflect on the relationship between such Convention and other rules of international law, a series of fundamental principles of general international law comes to our mind. The recent developments since 9/11 point our attention firstly to the principle of prohibition of the use of armed force in international relations. In addition, issues of the right of self-determination (and of its consequences in assessing the legality of certain uses of violent means against oppressive governments) are at the agenda. The principles of humanitarian law were already dealt with in the second section of the seminar. On a meta-level, however, also questions of state responsibility and international criminal law demand our attention.

The contribution will accordingly deal first with questions of the use of armed force, then with issues of self-determination. In a third and fourth section, questions of international criminal responsibility and of international criminal law will be raised. According to the format of the seminar, these remarks will only give some brief ideas and will formulate a set of theses; they will not deliver a comprehensive coverage of the issues involved.

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2. *The Prohibition of the Use of Armed Force*

Issues of terrorism and of counter-terrorist strategies have since a long time formed a hot issue under the general prohibition of armed force codified in Art.2 (4) of the UN-Charter. The traditional understanding did not qualify acts of terrorism committed by underground organizations against third state targets as acts of 'armed force' in the sense of Art.2 (4). Acts of transnational terrorism became only an issue under Art.2 (4) resp. Art.51 when they were attributable to a 'hintermann' state controlling the terrorist organization. The ICJ had to deal with the criteria of such control in its famous Nicaragua judgment - and chose a very restrictive construction. Attributability of such violent acts requires some kind of 'overall control' according to the ICJ. Supporting terrorist organizations logistically may constitute an internationally wrongful act in itself, but usually will not amount to an 'armed attack' in the sense of Art.51 if one follows the ICJ. There has been quite some debate around such a restrictive interpretation, but the ICJ has remained rather firm in this regard. In the aftermath of 9/11, an additional debate has arisen whether terrorist acts of such a heinous nature and intensity as the attacks on New York's World Trade Center might constitute an 'armed attack' in itself, entitling the target state to react directly against the relevant terrorist organization on the basis of Art.51. There is no clear answer to this question, and the draft Comprehennsive Convention does not contain an explicit reference to such debate. It nevertheless clarifies some delicate issues in this regard.

In doctrinal terms there were difficulties in determining the exact legal basis of the legal obligation to prevent terrorist activities from one's own territory, as well as the prohibition to support terrorist organizations in what form so ever. The draft Comprehensive Convention now explicitly codifies such obligations by formulating that states shall cooperate in the prevention of terrorist offences "by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission" of those offences (Art.9 of the draft). Accepting the draft Comprehensive Convention thus would mean to agree that not only every form of direct or indirect support for terrorist activities would constitute an internationally wrongful act, but that states have to cooperate actively in suppressing every form of terrorist activities taking place within its territories. This is a valuable clarification on an issue hitherto disputed.

3. *The Principle of Self-Determination and Wars of National Liberation*

Such an all-inclusive obligation to cooperate, in combination with the broad and sweeping definition of terrorist offences in Art.2 and the jurisdictional regime linked to it under Art.7, might create difficulties concerning the right of self-determination. Although the struggle against colonial domination nearly has come to its end, the case of armed occupation remains as an open issue regarding self-determination. Since there exist open wounds of long-standing (illegal) occupation, and since experience demonstrates that new situations of armed occupation may occur from one day to another, states (in particular from the Third World) have been very cautious in this regard. This is all the more

explainable if one takes into consideration the continued support of a large number of states for the legal claim that aiding oppressed people in their 'wars of national liberation' does not constitute an illegal act of armed force, or a case of prohibited intervention, but is fully justified. If there were no safeguard clause included in the text of the treaty, the use of armed force by national liberation movements would fall under the definition of 'terrorist offences' according to Art.2 of the draft Convention, obliging states to cooperate in the prevention and criminal prosecution of such activities. The demand for a specific safeguard clause thus is understandable. This is all the more true if one takes into consideration the broad wording of draft Art. 18 paras.2 and 3, which exclude from the scope of application nearly any activity of armed forces during an armed conflict, but also in any kind of official duties outside such conflict. If one goes along this way, it is difficult to argue that national liberation movements should be fully covered by the scope of application of the draft Convention, whereas activities of regular armed forces of states would enjoy complete immunity from the provisions of the Comprehensive Convention. A preambular paragraph referring to the right of self-determination is not enough in itself to serve the purpose of exempting legitimate attacks of liberation fighters against military objectives from the notion of 'terrorist offences'.

By the way, the issue of 'wars of national liberation' is only part and parcel of a bigger problem created by the broad and sweeping definition of Art.2. Lawful attacks on military objectives exercised by liberation movements are covered by a range of rather clear legal rules. Even if these acts might qualify on first glance as 'terrorist offences' in the sense of the definition of Art.2, since they cause death, serious bodily injury or serious damage with the purpose to compel a government, they constitute lawful acts under international humanitarian law and are thus excluded from the scope of 'terrorist offences' under Art.2. This is not the case with acts of violence committed by insurgents in a non-international armed conflict. National governments (and legislators) usually will criminalize such acts as severe crimes against state security. International humanitarian law does not mirror such legal asymmetry, but all the attempts of the ICRC to extend the regime of international armed conflicts to internal conflicts (and thus to grant combatant immunity to fighters of insurgent military forces) have failed due to the unwillingness of states to 'legitimize' insurgents. Accordingly, international humanitarian law avoids to take any position on the legality of insurgency movements. In an overall perpsective of legitimacy, they may be legitimate or not - it is not the task of international law to undertake such a qualification. This leads to a problem under the draft Comprehensive Convention, however. In general, military activities of insurgent forces will fulfill the material requirements of the definition of Art.2. Contrary to acts of regular armed forces and national liberation movements, however, these acts will not be excluded with the definitional element "unlawfully" - they are unlawful under national law and not explicitly lawful under international law. But do we have sufficient normative consensus that any form of insurgency, under any condition whatsoever, is illegitimate and should be prosecuted worldwide? I have my doubts in this regard.

4. State Responsibility and Individual Liability under International Criminal Law

Admittedly, there exist clear differences between the operations of armed forces during armed conflict and the armed activities of liberation movements in self-determination struggles and insurgent forces in internal conflicts. Armed forces of states are put under a comprehensive legal regime, formed by the four Geneva Conventions and its two Additional Protocols. States are obliged to take care for the full implementation of the humanitarian law standards, including particularly the prohibition of indiscriminate attacks, and must sanction violations of the basic rules of humanitarian law. If they do not conform to these obligations, they commit an internationally wrongful act and become subject to the mechanisms of state responsibility. National liberation movements, to the contrary, are not formally bound to the Geneva Conventions, at least as long as they do not deposit the declaration under Art.1 (4) AP I. If they would profit from a wholesale exclusion like this is the case for the activities of armed forces, they could easily escape any responsibility. If they would take refuge to forms of terrorist violence - and experience shows that there exists a severe temptation to do this - an exclusion from the scope of application of the draft Convention could go along with a position where such liberation movements would act beyond any liability under international law.

A view to the principles of international criminal law corroborates this observation. Even if excluded from the scope of 'terrorist offences' as defined by the draft Comprehensive Convention, members of armed forces in international armed conflict are individually liable under the principles of international criminal law for war crimes and crimes against humanity. States are obliged under the Geneva Convention system to prosecute such international crimes, and it is generally accepted that they fall under the principle of universal jurisdiction which means that also other states, if the perpetrators are later found on their territory, may prosecute such criminal acts. In the case the state concerned does not fulfil adequately its obligation to prosecute, members of armed forces might even end up before the ICC, as soon as the home state and/or the state where the criminal acts were committed has ratified the Rome Statute. If not, the Security Council may still entrust the ICC with jurisdiction, as it did in the case of the Darfur crimes.

The issue is much more difficult in the case of liberation movements, and hopelessly deficient in the case of internal armed conflicts. As long as liberation movements have not submitted a declaration according to Art. 1 (4) AP I, their members are not covered by the 'grave breaches' provisions (with the resultant universal jurisdiction) of the Geneva Convention system. It is an open issue, whether and to which degree the other categories of war crimes as codified in Art.7 (2) (b), (c) and (e) Rome Statute cover terrorist acts of national liberation movements. It is even more doubtful whether terrorist acts outside armed conflicts will regularly fall under the category of 'crimes against humanity' as it is defined in Art. 7 Rome Statute, bearing in mind particularly the element of a large-scale and systematic attack against the civilian population. Accordingly, excluding activities of liberation movements completely, as was initially proposed by the OIC, would have opened a 'black hole' of impunity for terrorist acts committed by members of national liberation movements.

On the other hand, exempting armed forces of states competely from the scope of application of the Comprehensive Convention cements the 'impunity' more or less enjoyed by these forces in cases of internal conflicts and in the suppression of civil unrest and political riots. For non-international armed conflicts, the Geneva Convention system does not know any system of 'grave breaches' leading to an obligation of prosecution and to universal jurisdiction of all member states over such crimes. Jurisdiction remains more or less national - and the states concerned usually do not prosecute such crimes, at least if committed by their own armed forces. International humanitarian law with its own system of individual criminal liability does not constitute a 'contained regime' - just to the contrary, in the case of internal conflicts it is so deficient that it does not justify an argument of 'overlap of mechanisms'. Perhaps it would be too ambitious to expect a solution to this fundamental problem from the Comprehensive Convention - but the argument that the activities of armed forces are comprehensively regulated by international humanitarian law and that these rules should take priority as a kind of 'lex specialis' is simply not true for non-international armed conflicts (as it is not true with regard to human rights law in peacetime missions).

The recent compromise text tries to bridge the (in a normative perspective) unjustifiable discrepancy between the wholesale exemption for all activities of armed forces and the unconditional inclusion of acts of liberation fighters and insurgents (with the only exception of acts 'lawful' under IHL that are not to be qualified as 'terrorist offences' under draft Art.2). By referring in general to the "rules of international law applicable in armed conflicts, in particular those rules applicable to acts lawful under international humanitarian law", it exempts attacks against military objectives committed by members of liberation movements from the notion of 'terrorist offences'. It does so, however, only insofar as these acts are "lawful under international humanitarian law" - a condition which deliberately terrorist strategies will never fulfill. Accordingly, it incorporates the clear borderline drawn in IHL between 'lawful' acts of armed force exercised by liberation movements under humanitarian law, and 'illegal' terrorist acts falling under the scope of application of the draft Comprehensive Convention. It does not really solve, however, the issue of acts of violöence committed by insurgents in non-international armed conflicts.

It remains to be seen whether the proposed compromise formula will be sufficient to convince governments, but also the public in the South of the inherent fairness of the Convention's delimitation of what constitutes 'terrorism', and what legitimate acts of (military) violence against opposing forces. Alternative formulae of a convincing nature are not easy to find if one does not want to change the draft radically. The OIC proposal obviously goes too far in exempting also all other 'parties in armed conflict', thus creating the same grey zone of 'impunity' that was criticized here concerning armed forces also for liberation fighters and insurgents. A solution probably could be found best in the reshaping of the definitional formula of Art.2, by limiting the scope - as was proposed by Liechtenstein - only to acts committed against civilians, at least as far as situations of armed conflict are concerned. If the limitating clause were to be included in the safeguard provisions of draft Art. 18, it would either have to resemble the Jordan proposal from 2005, exempting activities during an armed conflict, except offences against protected

civilians, or it should be worded according to the model of Art. 12 Hostage Convention, which provides that the Convention does not apply insofar as the Geneva Conventions or its Additional Protocols are applicable and the Contracting States are obliged under these conventions to prosecute or extradite offenders of the terrorist acts.

5. *Concluding Remarks*

One could say also a lot concerning the uses of the principles of universal jurisdiction and of 'aut dedere aut judicare'. I see no criticsm, however, regarding the use of these principles in the draft Comprehensive Convention. The draft considerably extends criminal jurisdiction concerning terrorist offences, but still links this extension to traditional links of jurisdiction, avoiding whole-sale universal jurisdiction. Instead, it takes refuge to a general principle of 'aut dedere aut judicare', as known from the previous, more specialised anti-terrorist conventions. Since states are obliged to establish jurisdiction for all cases where they do not extradite authors of terrorist offences, a 'covert' form of universal jurisdiction enters the stage through the backdoor, however. Nevertheless, this type of 'universal' jurisdiction is much less aggressive, follows a much more reactive pattern - and this is easily compatible with traditional concepts of criminal jurisdiction.

To sum up: the core problem of the draft Comprehensive Convention is linked to the definitional formula of Art.2, which is by far too broad and sweeping, covering a whole range of cases that should not be discussed as an issue of 'terrorism'. By covering prima facie all kinds of military activities, it creates a bundle of problems, in linking the definition of 'terrorist offences' to the judgments of 'lawfulness' under IHL. Bringing back into the cage of an acceptable scope of application the legal ghosts set free by the over-broad definition of 'terrorist offences' seems to be a nearly insoluble dilemma. The exemtion clauses now contained in draft Art. 18 are too wide-ranging (in the case of armed forces) and too narrow (in the case of liberation movements and insurgents) at the same time. The attempt to bring under the coverage of the Convention not only acts of terror committed against civilians (a situation where there seems to exist an undisputed consensus in the international community), but also acts of violence committed against armed forces by non-state actors, extends the criminalization into an area where we do not have a sufficient normative consensus globally. This might perhaps work for acts of violence committed in peacetime. For acts of violence committed against military objectives in armed conflict, however, such a broad coverage would open up a pandora s box - the Comprehensive Convention would too easily conflict with the still evolving regime of non-international armed conflicts. A bit more caution (and self-restraint) in ambitions would enable negotiations to overcome the stalemate experienced in the last years. But this probably would require to go back to the definitional formula of Art.2 and to correct the mistakes made there in an earlier phase.

The Relationship between the Convention and Other Rules of International Law

Prof. Dr. Dres. h.c. J. A. Frowein

1. Introduction:

It is the privilege of the scholar to look at the Draft Convention in an independent manner, not influenced by the long history of negotiations known to those who have been involved. In that respect I would like to offer a few thoughts on what one could have wished if the political will would be present. But let me first say that there are certainly some very encouraging examples of progress in the Draft Convention which we have before us. I would stress in particular article 9 which lays down the obligation of States Parties to cooperate in the prevention of the offences and coordinate administrative and other measures.

Let me mention in that context that I argued almost twenty years ago when I dealt at The Hague Academy with the legal aspects of international terrorism that States are under an obligation to furnish information available to them to other States if that information is relevant to prevent terrorist acts affecting human lives in an indiscriminate manner. (Insgesamt J. A. Frowein, The Legal Aspects of International Terrorism, Center for Studies and Research in International Law and International Relations, The Hague Academy of International Law, 1988, 55-96).

2. The approach as to the sphere of application:

It is noticeable that the much discussed old Article 18 starts from the idea that there must be an exclusive sphere of applicability of the Convention on the one hand, and other rules of international law on the other. This approach is quite doubtful. It would mean that suicide bombings in the context of an internal armed conflict as we have it in so many parts of the world could not fall under the Convention. I see no legitimate reason for that. It seems much more consistent with the general rules of international law to apply both sets of rules together where there is no conflict between them. The rules of humanitarian law concerning non-internationalarmed conflict are much less precise as far as cooperation among States, extradition and prosecution are concerned, compared with the Draft Convention. Where a terrorist act is committed in an internal armed conflict, to take the most important example, both rules can be applied at the same time.

It should be underlined that a statement made almost twenty years ago is still valid: "It is not a far fetched conclusion from there to say that public international law can never contain a justification for terrorist acts where the laws of war do not apply, if, given their application, such a justification is excluded" (loc. cit. 78). Suicide bombings against civilians are

prohibited under humanitarian law and it makes no sense to exclude the application of the Convention from them.

We were informed at the meeting that according to an interpretation accepted in particular by northern states "armed forces" in Art. 18 par. 2 should be limited to armed forces of a State. Such an interpretation seems untenable in view of the fact that par. 3 speaks of "military forces of a State" and par. 2 does not have that addition. According to Art. 1 Protocol II this Protocol applies to armed forces of a party and dissident armed forces or other organized groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. At least for those armed forces Art. 18 par. 2 would be seen as clearly applicable by anyone using normal rules of interpretation.

3. Human Rights Law

According to para. 3 of Article 18 the activities undertaken by the military forces of a State in the exercise of their official duties, in as much as they are governed by other rules of international law, are not governed by the Convention. Here again, a rule of exclusion is applied which is very difficult to justify. Human rights law applies to the activities by the military forces of a State in the exercise of their official duties. This leads to the inapplicability of the Convention. Does that make sense? It would be a privilege for military forces compared with other persons difficult to justify in the general context of the Convention. It would also not be in line with the idea that police forces are excluded from that rule.

It seems understandable that military forces of a State in the exercise of their official duties should be protected against charges which have no justification whatsoever. If one opts for the rule included in Art. 18 par. 3 one must be aware of the imbalance created between different forces of a non-international armed conflict.

4. The Reservation of Other Rules of International Law

Several provisions underline that the Convention should not be understood as affecting other rights, obligations and responsibilities of States, peoples and individuals under international law. This is laid down in Article 18, para. 2 as well as in the provision concerning territorial jurisdiction (Article 22). It is to be regretted that the Convention does not address an issue which is of great relevance in the context of international terrorism.

While the duty to cooperate is stressed in the Convention, the text does not go as far as it should. Let me refer to what was laid down as a general principle in 1988 in the Hague Seminar on Terrorism:

> "A State, on whose territory a terrorist act takes place, shall consider permitting the State whose nationals are taken hostage or are otherwise under imminent threat from terrorists to remove the threat if that is possible without creating any danger for the security of the territorial State" (loc. cit. 63).

This rule would seem to be a very important clarification of what the duty of cooperation must mean in specific cases. It is of course formulated on the basis of the famous Mogadishu incident when German police forces liberated the hostages in the Lufthansa plane. This was done after Somalia had given its permission. In cases where the territorial State has no possibilities to intervene it should at least be seen under the obligation to seriously consider whether or not forcible intervention by the threatened State, if this State has special forces available, should not be made possible.

Such a rule would also make it much less likely that unilateral intervention takes place. One must be aware that there is quite a trend in modern international law and practice to justify unilateral intervention in extreme cases. The Entebbe incident is a good example, but also the aborted interventions by the US or the action of Egypt on Cyprus.

A rule as indicated would clarify the obligation to cooperate in a particularly sensitive area.

In 1988 the issue of unilateral intervention was phrased as follows:

> "States shall not use force to protect their citizens who are under an imminent threat to their lives by terrorists on the territory of another State, unless that State fails to cooperate in order to remove the threat" (loc. cit. 69).

I remain convinced that this is a proper description of the law.

5. Some specific suggestions

5.1 The following words should be added to Art. 18 par. 2: "unless they fall under Art. 4, par. 2 d of Protocol II."

Since Art. 4 par. 2 d Protocol II protects all persons who do not take a direct part or who have ceased to take part in hostilities against acts of terrorism it would really be a contradiction to exclude the Terrorism Convention in that sphere. The added wording would clarify that where acts of terrorism take place against persons who do not take a direct part or who have ceased to take part in hostilities all the procedural rules of the Terrorism Convention would apply. They would add important obligations of States to prevent, to cooperate and to extradite concerning non-international armed conflicts where such obligations do not exist on the basis of either

common Art. 3 or Protocol II. It would not seem necessary to add similar wording concerning international armed conflicts where detailed rules exist in the IVth Convention and Protocol I.

5.2 Concerning Art. 18 par. 2 it should be added that this concerns activities by the military "or other security forces" of a State. It makes no sense to exclude special police forces which are frequently the ones used against terrorist acts.

5.3 Art. 4: The wording "as appropriate" in the last part seems very vague indeed. It would be much preferable to make Arts. 9 and 13 to 17 applicable in full for all terrorist offenses committed within a single State. There are some provisions which would be superfluous. However, there one could use the wording "shall, to the extent feasible, apply in those cases".

5.4 In Art. 13 it would be much more logical to put "in particular" before international human rights law and then continue with the standard minimum rules for the treatment of prisoners. Human rights law is hard law which is always applicable. The standard minimum rules are not hard law.

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NOTES ON INTERVENTIONS

(High level Seminar on the Draft Comprehensive International Convention on International Terrorism, 11-12 September 2007, SWP, Berlin)

Session I on Political Aspects

Coming as I do from India, I thought it would be a god idea to give a backgrounder to the discussion on the draft Comprehensive Convention on International Terrorism.

The 1994 General Assembly Declaration on Terrorism anticipated a comprehensive international convention on the subject. India's working Paper on 1998 resulted from this. The Indian initiative was motivated by a number of factors. One, since late 1980's thousands of innocent lives had been lost to terrorism. Over 30,000 lives were lost in India because of terrorism in Kashmir and the northeastern parts of India, well before 9/11. Two, India was disappointed with what was to be the Rome Convention on the Statute of the International Criminal Court, because unlike the 1994 ILC Draft of the Statute, it failed to include acts of international terrorism within the jurisdiction of the ICC. Three, India had by then evolved its own brand of bilateral counterterrorism extradition treaties beginning with the one with Canada in 1987, which had increasingly made it difficult for the terrorist to escape the law under the pretext of political offences doctrine. This feature of these treaties has been quite novel, and a representative example has been the Indo-British Extradition Treaty 1993 that excluded a specified list of criminal acts from the scope of the political offences doctrine. Four, the dozen or so international conventions on terrorism had dealt with the problem only piecemeal. There was a need to consolidate the elements of these conventions, and it was possible to do so by identifying common elements evolved over a long period of time in different contexts that have by now acquired consensus. The objective was to improve the level and scope of international cooperation in the administration of criminal justice in participant countries.

However, the 1998 Indian draft modified in 2001, has undergone considerable change through the vicissitudes of UN negotiations. One important omission from that draft is the annexed list of convention-based terrorist acts to be excluded from the political offences doctrine, while pursuing extradition under the draft convention.

As regards the relation between self-determination and terrorism, the fear of secession on the part of established states on the one hand and the zeal for national liberation movements to ensure minimal legal restraints on the other, is well balanced in the penultimate paragraph of the formulation of the principle of equal rights and self-determination in the Friendly Relations Declaration 1970 - a reference to which has been made in a preambular paragraph of the draft CCIT, and also in article 1(4) of the Geneva Protocol I of 1977.

Session II on Exclusion of IHL Situations

Chairman's observations: By way of a preliminary remark, Chairman Professor Mani said; At least three international anti-terrorism conventions - 1979 Convention against Taking of Hostages, 1997 Convention against Terrorist Bombing and 2005 Convention against Nuclear Terrorism -embody specific provisions to exclude terrorist acts covered by the International Humanitarian Law (IHL) from the ambit of these conventions. Therefore, it is appropriate for the draft CCIT to specify such exclusionary clauses. It is indeed interesting to note the changes that have occurred to Article 18 of the Indian Working Paper of 2001 - see Article 20 of the Consolidated Text of 2005 and Article 18 of the Telalian Draft of February 2007.

Prof. Mani made five substantive observations on the scope of terrorism-relevant IHL. *First,* the general postulates of IHL. Article 35 of the Geneva Protocol I of 1977 proclaims that the means and methods of warfare are not unlimited, but inhibited by three presiding principles: (1) the principle of discrimination of non-combatants from combatants and of civilian objects from military objects; (2) the principle of prohibition of means and methods causing unnecessary suffering and superfluous injury; and (3) the principle of prohibition of severe and lasting damage to the environment. These principles received emphasis at the hands of some of the judges in the *Nuclear Weapons* advisory opinion of the ICJ in 1966.

Second, The Court has also consistently upheld "basic considerations of humanity that are more important in peace than in war" - the *Corfu Channel* case 1949 and *Nicaragua Merits* case 1986.

Third, The Court in the *Nicaragua Merits* case further held that regardless of the character of an armed conflict (whether it is of international or non-international character), the minimum guarantees of treatment embodied in the common Article 3 of the Geneva Conventions 1949 shall apply to all situations of armed conflict.

Fourth, terrorism comprises a wide range of acts that are already prohibited under the penal laws of nations. These acts, regardless of whether they are terrorist acts or other criminal

acts, may in a given context qualify as war crimes, crimes against humanity or genocidal acts. Further, terrorism in armed conflict has a special purpose during armed conflict. Essentially, the detailed rules of IHL have a dual focus:

(1) *Protection of Civilians:* Article 33 of Geneva Convention IV of 1949 and articles 51 and 52 of the Geneva Protocol I of 1977 provide for such protection. Terrorist acts causing death, torture or inhuman treatment, taking of hostages or extensive damage to property are grave breaches of IHL qualifying for War Crimes (Art.147 of Geneva Convention IV and Article 8 of ICC Statute.). These acts may also in context amount to genocide or crimes against humanity.

(2) *Ban on terrorist acts against combatants:* The ban arises from the Geneva Protocol I Article 35 principles and the prohibition of acts of perfidy. Prohibition of extermination of the sick or the wounded (Article 12(2) of the Geneva Convention I, and Geneva Convention IV) renders such prohibited acts war crimes. Protection of PoWs under Geneva Convention III against torture or other physical violence would render the prohibited acts to qualify for war crimes or crimes against humanity.

Article 33 of the Geneva Conventions is the only provision that specifically employs the term "terrorism." It says: "All measures of intimidation or terrorism are prohibited."

Finally, IHL recognizes a national liberation movement as a party to an international armed conflict, provided (a) it is eligible under the Friendly Relations Declaration definition of self-determination and (b) it conducts itself strictly in accordance with the rules of IHL.(article 1 (4) & article 96(3) of the Geneva Protocol I of 1977).

Against this background of IHL, let us see what gaps there are in IHL in respect of terrorism.

Session III Exclusion of situations covered by other rules of international law

It is important to emphasise the need for respect for human rights in the context of counterterrorism measures. Ever since the General Assembly Declaration on Terrorism was adopted in 1994 there is a trend in state practice to compromise human rights in favour of counterterrorism. The refugee law has highlighted this - refugees find their rights curtailed now more than ever before, and state under the façade of counterterrorism can go around with impunity.

Session IV Steps ahead

I entirely agree with the points raised by Professor Tomuschat in his critique of Article 1 (c) and Article 18 of the draft CCIT. I wish to add two footnotes to what the learned professor said. One, diplomacy may be the art of the possible, but the in the interest of "consensus" so far achieved, the provisions already agreed to should not be reopened, seems to suggest that consensus is an end in itself. A treaty like CCIT requires to be implemented through

national laws and instrumentalities, and the decision-makers there would prefer precision to consensual ambiguity. Hence the importance of Prof. Tomuschat's contribution. Two, the problems pointed out by the professor arose mainly because the subsequent drafts tried to break some of the provisions contained in the original Indian draft into two or three separate provisions each, without caring much for the overall impact of the drafting changes. It is thus that Prof. Tomuschat finds the definition of terrorist acts contained in the current draft article 2(1) (c) to broad to include all "damage to property..." In the original Indian draft, all such damage still remained "serious damage."

One reason why I agree that there is a need for the CCIT is because it is settled by states, without leaving much to the vagaries of power politics at the UN Security Council. The Council will have to take note of the existence of CCIT whenever it deals with issues of terrorism.

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Security Council
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Identical letters dated 12 February 2008 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I transmit to you herewith a statistical summary of Israeli violations committed from 1 to 7 February 2008 (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the sixty-second session of the General Assembly, under agenda item 17, and of the Security Council.

(*Signed*) Nawaf **Salam**
Ambassador
Permanent Representative

08-23813 (E) 130208 140208

Annex to the identical letters dated 12 February 2008 from the Permanent Representative of Lebanon to the United Nations addressed to the Secretary-General and the President of the Security Council

Israeli violations, acts of aggression and other activities from 1 to 7 February 2008, inclusive

Air violations

On 2 February 2008 between 2125 and 2205 hours, an Israeli enemy helicopter circled over Lebanese territorial waters off the areas of al-Naqurah and Tyre.

Between 1915 and 2200 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over 'Alma al-Sha'b. It circled over the southern areas then headed north, reaching al-Na'imah. It circled over al-Na'imah and al-Damur then departed over al-Naqurah.

Between 2140 and 2230 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over the sea off Tyre. It headed north as far as Beirut, circled over the sea off Beirut and then departed over al-Naqurah.

On 3 February 2008 between 1100 and 1140, four Israeli enemy military aircraft violated Lebanese airspace, two over Rumaysh and two over Kafr Killa, heading north as far as al-Batrun. They circled between the South and al-Batrun and then departed over al-Naqurah.

Between 1915 and 2023 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over Rumaysh, circled over the South and then departed over Yarun.

Between 2130 and 2150 hours, an Israeli enemy helicopter circled over Lebanese territorial waters off Ra's al-Naqurah.

On 4 February 2008 between 2203 and 2358, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over 'Alma al-Sha'b, circled over areas of the South then headed north, as far as Beirut, circled between Beirut and the South and then departed over 'Alma al-Sha'b.

On 5 February 2008 between 1800 and 1830 hours, an Israeli enemy reconnaissance aircraft circled over the area of al-Naqurah.

Between 2100 and 2145 hours, an Israeli enemy helicopter circled over Lebanese territorial waters off the area of al-Naqurah.

At 2140, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over the sea off Tyre, heading east. It circled over the southern areas then departed on 6 February 2008 at 0030 over 'Alma al-Sha'b.

On 6 February 2008 between 1655 and 1955 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over the sea off Tyre. It circled over the sea off Beirut and departed over the sea off al-Naqurah.

Between 1700 and 1835 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over the sea off al-Naqurah. It circled over the South and then departed over the sea off al-Naqurah.

On 7 February 2008 at 1055 hours, six Israeli enemy military aircraft violated Lebanese airspace, two over Rumaysh and four over al-Naqurah, heading north as far as Dahr al-Baydar. Between 1100 and 1103 hours, four other aircraft violated Lebanese airspace over the sea off al-Batrun heading east. The 10 aircraft then circled the areas of Baalbek, al-Hirmil and Shikka. They departed at 1125 hours, six over the sea off al-Naqurah and four over Rumaysh.

Between 1135 and 1145 hours, two Israeli enemy military aircraft violated Lebanese airspace over Kafr Killa, heading north over the sea as far as Shikka before departing over the sea off Shikka.

Between 1510 and 1615 hours, an Israeli enemy reconnaissance aircraft violated Lebanese airspace over the sea off al-Naqurah. It reached the area off Beirut and circled there, then departed over al-Naqurah.

Sea violations

None.

Acts of aggression in the field

On 1 February 2008 at 1100 hours, outside the town of Kafr Killa at the crossing, eight Israeli civilians operated a water pump and pumped water into Lebanese territory. The municipality of Kafr Killa worked together with the South intelligence branch to put up an earthen berm in order to prevent the water from flooding Lebanese territory.

On 2 February 2008 at 1945 hours near the technical fence opposite the Kafr Killa - al-'Adaysah highway, an Israeli enemy patrol composed of six Hummer vehicles and some 25 infantry shouted at Lebanese citizens residing next to the said road, pointing weapons at them and demanding that they enter their homes.

On 3 February 2008 at 1100 hours, outside the town of Kafr Killa at the crossing, an Israeli enemy excavator breached below the lower part of the technical fence south of the crossing, causing water to flow from within the occupied Palestinian territories into Lebanese territory.

At 1930 hours, by al-Wazzani near the pump, the Israeli enemy fired flares over the area and directed a number of rounds towards Lebanese territory. One man, Salim Qubaysi, was hit in the chest (his condition is serious). Another, 'Abdullah al-Muhammad, was hit in the hip and died instantly.

On 6 February 2008 at 2015 hours, on four successive occasions and for seconds at a time, the Israeli enemy shone a searchlight from Saliha, near Marun al-Ra's, towards a Lebanese Army observation post.

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General Assembly
Sixty-second session
Agenda items 16 and 20

Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Security Council
Sixty-third year

Letter dated 12 February 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the report entitled "The War against Azerbaijani Cultural Heritage", prepared by the Ministry of Foreign Affairs of Azerbaijan.

On the eve of the sixteenth anniversary of the Khojaly Genocide — terrible atrocities committed by the Armenian armed forces on 26 February 1992 as a result of which the town of Khojaly was burned to the ground, 613 people, including 106 women, 63 children and 70 elderly men were mercilessly killed, 1,275 persons were taken hostage, the fate of over 150 still remains unknown — I should state that not only the territories of Azerbaijan continue to be occupied, furthermore the ceasefire is repeatedly violated by the Armenian armed forces.

The positions of the Azerbaijani armed forces were shelled 7 times during the month of January, 5 times in February, 10 times in March, 15 times in April, 17 times in May, 20 times in June, 31 times in July, 165 times in August and 127 times in September 2007. One cannot but notice the considerable increase of fire from January to September. In 2007 alone 14 soldiers of the Azerbaijani armed forces were killed and 20 were wounded.

I should be grateful if the present letter and its annex were distributed as a document of the sixty-second session of the General Assembly, under agenda items 16 and 20 and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Permanent Representative

08-23857 (E) 190208

Annex to the letter dated 12 February 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The War against Azerbaijani Cultural Heritage

Azerbaijan is one of the areas of earliest human settlement with a rich historical past and diverse cultural legacy. Different rock drawings, architectural monuments, samples of arts and crafts, as well as a great number of artefacts unearthed as a result of archaeological excavations testify to the country's distant past, its vast cultural heritage.

The occupation of 20 per cent of the Azerbaijani territory, which made approximately one out of every eight people in the country an internally displaced person or refugee, has also had catastrophic consequences for the country's cultural heritage both in the occupied territories and in Armenia.

The occupation of Nagorno-Karabakh and seven adjacent districts of Kalbajar, Lachyn, Gubadly, Zangilan, Jabrayil, Fuzuli and Aghdam, as well as seven villages in the district of Gazakh and the village of Karki in Nakhchyvan, which are beyond Nagorno-Karabakh and border on Armenia, with 1,891 cultural resources, comprising 738 monuments, 28 museums with more than 83,500 exhibits, 4 picture galleries, 14 memorial complexes and 1,107 cultural establishments, led to a great cultural loss for Azerbaijan.

Among these monuments one could find architectural monuments of national importance, such as the sixth century Albanian Aghoghlan cloister and the fourteenth century Malik Ajdar tomb in Lachyn, the fourth century Albanian Amaras cloister and a considerable number of Albanian temples in Khojavand, the eighteenth century Asgaran castle, fourteenth century tombs and a number of Albanian temples dating back to the Middle Ages in Khojaly, the sixth century Albanian Saint Jacob and thirteenth century Albanian Khatiravang cloisters and the thirteenth-fourteenth centuries Lekh castle in Kalbajar, the Albanian cloister of the fifth to eighth centuries in Gazakh, the thirteenth-fourteenth centuries Mirali tomb and the seventeenth century caravanserai in Fuzuli, the fourteenth century tomb in Zangilan, the seventeenth century mosque complex in Jabrayil, the eighteenth-nineteenth centuries Yukhary and Ashaghy Govharagha and Saatly mosques, caravanserais and houses in Shusha, the nineteenth century mosque in Aghdam, and archaeological sites like Garakopaktapa, Khantapa, Gunashtapa, Uzuntapa, Meynatapa and Zargartapa, residential areas of the Neolithic and Bronze Ages in Fuzuli, the residential areas of Chyragtapa and Garaghajy, of the Bronze Age, and those of Gavurgala, of the Middle Ages, and Aghdam, Imangazantapa and Gyshlag mounds of the Bronze Age in Jabrayil, rock drawings of the Bronze Age in Kalbajar, the stone box necropolis of the Bronze and Iron Ages in Khojaly, the residential area and necropolis of the Bronze Age in Sadarak, mounds of the Bronze and Iron Ages in Lachyn, a cave of the Stone Age, a mound and stone box graves of the Bronze and Iron Ages in Shusha, and the Shahri-Sharifan residential area of the thirteenth-fourteenth centuries in Zangilan.

The occupied territories of Azerbaijan were not only rich with monuments classified as being of national importance, of which but a few are listed above, but also with those of world importance, for instance the 11- and 15-arch medieval

Khudafarin bridges and Niftaly mounds of the Bronze Age in Jabrayil, Albanian medieval Ganjasar and Khudavang cloisters in Kalbajar, the fourteenth century Gutlu Musa oghlu tomb and Uzarliktapa residential area of the Bronze Age in Aghdam, the Azykh and Taghlar caves of the Paleolithic Age in Khojavand, and mounds of the Bronze and Iron Ages in Khojaly.

Apart from its wealth of architectural and archaeological monuments and its spectacularly beautiful nature, Karabakh has been home to many talents, among whom Vagif, Natavan, Nawab, Hajybayov and Bulbul deserve special mention, whose legacy, for their great contribution not only to the Azerbaijani but also to the world's cultural heritage, has widely been recognized by the international community.

The ongoing policy of deliberate destruction of this legacy following the occupation has been and continues to be an irreparable blow both to Azerbaijani culture and world civilization. As has clearly been demonstrated in the deliberate change of the cultural look of Shusha and other towns and settlements of Karabakh by destroying the monuments and changing architectural features, and making "archaeological" excavations, this Armenian policy pursues far-reaching targets of removing any sign heralding their Azerbaijani origins.

Analysis of the period of 13 years since the declaration of a ceasefire in 1994 reveals the fact that the Armenian military actions have not destroyed Azerbaijani monuments to the extent to which this was subsequently done by the Armenian authorities later.

Thus, if in the years immediately following the military operations, in Shusha town the architectural monuments, such as the Yukhary and Ashaghy Govharagha mosques with their madrasahs, the mausoleum of Vagif, and the house of Natavan and caravanserais, have been destroyed, burnt, plundered and rendered unusable; the house of Aslan Garasharov, hero of the Second World War, has been razed to the ground and three new Armenian houses were built in its place. The later period proves the intensification of the barbarism, which has left almost no Azerbaijani monument without destruction or damage.

As for other districts, the "Imarat of Panah khan" complex, mosques in Aghdam town, Abdal and Gulably villages, the tomb of Ughurlu bay and the home museum of Gurban Pirimov in the Aghdam district, fourteenth century tombs in the Khojaly district, mosques in the Bashlybel and Otagly villages, ancient cemeteries in the Moz, Keshdak and Yukhary Ayrym villages and Kalbajar town in the Kalbajar district, mosques in the Zangilan, Gyrag Mushlan, Malatkeshin, Babayly and Ikinji Aghaly villages, medieval cemeteries in the Jahangirbayli, Babayly and Sharifan villages in the Zangilan district, ancient cemeteries in the Gayaly and Mamar villages, the mosque in Mamar village in the Gubadly district, the mosque in Garygyshlag village and the ancient cemetery in Zabukh village in the Lachyn district, the mosque complex in Chalabilar village and the ancient cemetery in Khubyarly village in the Jabrayil district, mosques in Fuzuli town and the Gochahmadli, Merdmli and Garghabazar villages in the Fuzuli district, the cemeteries of the Khojavand, Akhullu, Kuropatkino, Dudukchu and Salakatin villages and the old cemetery of Tugh village in the Khojavand district, the ancient hammams in Umudlu village in the Tartar district and the cemetery of Karki village in the Sadarak district, have been destroyed, burnt down and plundered.

The Museum of History in the Kalbajar district with its unique collection of ancient coins, gold and silverware, rare and precious stones, carpets and other handicraft wares, museums in Shusha, the Lachyn Museum of History, the Aghdam Museum of History and the Bread Museum and others have also been destroyed, plundered, and their exhibits put on sale in different countries. For example, the bronze statues of the poetess Natavan, the composer Uzeyir Hajybayov, the singer and musician Bulbul would have been sold as bronze scrap metal in Georgia if the Azerbaijani Government had not bought them for $500,000 and taken them to Baku. Similarly, a silver handbag from the Lachyn Museum of History was sold at a Sotheby's auction in London for $80,000.

Acts of barbarism are accompanied by different methods of defacing the Azerbaijani cultural image of the occupied territories. Among them are large-scale construction works therein, such as, for example, the building of an Armenian church in Lachyn town, the extension of the flight line of the Khojaly airport by destroying the children's music school, library, social club and infrastructure facilities. Another widespread practice employed is the change of the architectural details of different monuments, as the Saatly mosque and Khanlyg Mukhtar caravanserai in Shusha town, as well as replacement of the Azerbaijani-Muslim elements of the monuments with alien ones, such as the Armenian cross and writings, which have been engraved on the Arabic character of the nineteenth century Mamayi spring in Shusha town.

As for the fate of the Azerbaijani historical and cultural heritage in Armenia, those monuments which survived until the beginning of the conflict have since been destroyed, such as the Damirbulag and Goy mosques of Yerevan. The former was razed to the ground, while the latter has been "restored" and presented as a Persian mosque. The mosques and other Azerbaijani monuments in other places of Armenia have also shared the same fate as the above-mentioned two, together with ancient or modern Azerbaijani cemeteries and toponyms of Azerbaijani origin, which have been erased from present-day Armenia.

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Sixty-second session
Agenda item 54 (d)
Sustainable development: protection of global climate for present and future generations of mankind

Letter dated 29 November 2007 from the Chargé d'affaires a.i. of the Permanent Mission of Saudi Arabia to the United Nations addressed to the Secretary-General

I have the honour to transmit the Riyadh Declaration of the third summit of Heads of State and Government of OPEC Member Countries, held on 17 and 18 November 2007, for circulation as a document of the General Assembly under agenda item 54 (d) (see annex).

(*Signed*) Abdullatif H. **Sallam**
Counsellor
Chargé d'affaires a.i.

08-23888 (E) 290208 290208

Annex to the letter dated 29 November 2007 from the Chargé d'affaires a.i. of the Permanent Mission of Saudi Arabia to the United Nations addressed to the Secretary-General

[Original: Arabic]

The Riyadh Declaration

The Third Summit of Heads of State and Government of OPEC Member Countries

Riyadh, Kingdom of Saudi Arabia, 7 and 8 Dhu'lqa`dah A.H. 1428, corresponding to 17 and 18 November A.D. 2007

Continuing in the spirit of cooperation that characterized the first and second OPEC summits held in Algiers and Caracas in 1975 and 2000 respectively,

We, the Heads of State and Government of the member States of the Organization of the Petroleum Exporting Countries (OPEC),

Having received the gracious invitation extended by the Custodian of the Two Holy Mosques, King Abdullah Bin Abdulaziz Al-Saud of the Kingdom of Saudi Arabia, to hold the third OPEC Summit in city of Riyadh, the Kingdom of Saudi Arabia, from 7 to 8 Dhu'lqa`dah A.H. 1428, corresponding to 17 to 18 November A.D. 2007,

Reaffirming the inalienable and permanent sovereign rights of our States over their natural resources,

Cognizant of our States' commitments to the conservation, efficient exploitation and management, and long-term maintenance of their non-renewable petroleum resources in order to support sustainable development in our States and bring about prosperity and well-being for future generations,

Recognizing our obligation to develop our Countries and raise the living standards of our peoples,

And affirming the role of OPEC in contributing to global energy market stability and economic prosperity,

Have agreed on the following principles to guide the economic, energy-related and environmental efforts of OPEC and its member States in the following three areas:

- Global energy market stability;
- Energy for sustainable development;
- Energy and the environment.

Stability of Global Energy Markets

We affirm the importance of stable, abundant and competitive energy resources in ensuring global prosperity and the continued role of petroleum in world energy consumption. We also affirm the leading role of OPEC in meeting growing global energy needs, including those of developing economies, and our

Organization's mission of ensuring efficient, economic and regular petroleum supplies to consumer States while realizing a steady and reasonable income to the petroleum-producing States and a fair return on capital to those investing in the petroleum industry.

Globalization has expanded international trade and accelerated global economic growth. It has also improved communications, interconnected financial markets, advanced technology and increased mobility between States and peoples. As a result, the world's energy trade has expanded and is projected to continue to do so, driven by increased global economic growth and demand for energy. While globalization thus provides opportunities, it also poses many challenges, such as income inequality, market volatility and uncertain conditions.

The pivotal role played by petroleum in the economies of both our States and the rest the world makes petroleum market stability absolutely essential for both the conservation of that vital resource and for the economic and social development of our States. Moreover, the pivotal role played by the energy sector, and in particular the petroleum sector, in the economies of consumer States, makes energy security essential for their sustained economic development. As we strive to diversify our economies and improve our peoples' standards of living, we recognize that, with globalization, the economies of the world's States, as well as global markets, including energy markets, are integrated and interdependent.

OPEC is well-positioned to continue to meet a substantial share of global petroleum needs. While acknowledging the challenges of globalization and changing world energy market dynamics, we resolve to:

1. Reaffirm our commitment to the principles and objectives of the Organization's Statute and the Algiers and Caracas Solemn Declarations of 1975 and 2000, as well as the Long-Term Strategy of our Organization;

2. Continue to provide world markets with adequate, efficient, economical and reliable petroleum supplies in an effective and timely fashion;

3. Work with all parties to achieve balance in energy markets and stable and competitive petroleum price levels;

4. Emphasize the importance of global peace to enhancing investment opportunities in the energy sector and to stability and predictability in global energy markets;

5. Make the investments necessary to increase upstream and downstream capacities in the Organization's member States, while urging consumer States to create an environment conducive to investment in the petroleum sector in those States;

6. Underscore the interrelationships between the security of supplies and the security and predictability of global demand for energy;

7. Urge all parties to create ways and means to enhance the efficiency of petroleum financial markets with the aim of reducing short-term price fluctuations that are harmful to producer and consumer States alike;

8. Promote efficiency and sustainability in both the production and consumption of petroleum resources, while stressing the dynamic role of technology and innovation;

9. Continue the process of coordination and consultation with other petroleum-exporting countries, in the interests of all producer States;

10. Strengthen and broaden areas of dialogue between producer and consumer States through the International Energy Forum and other international and regional forums, for the benefit of all, and welcome the successful dialogues between OPEC and the European Union, the People's Republic of China, the Russian Federation, the International Energy Agency and others;

11. Reiterate that measures or legislation undermining the spirit of cooperation between producer and consumer States would jeopardize market stability and energy security;

12. Encourage cooperation and exchanges of experience in the fields of technology and human resource development among the petroleum industries of the OPEC member States and other parties to promote efficiency, innovation, governance and the adoption of global industry best practices;

13. Urge the governments of consumer States to adopt transparent and non-discriminatory trade, fiscal, environmental and energy policies to promote free access to markets and financial resources;

14. Work with other governments, international organizations and the international business sector to facilitate investment in and transfer of technology to OPEC member States in order to diversify our economies and achieve social progress and sustainable development.

Energy for Sustainable Development

We affirm that energy is essential for eradicating poverty, achieving sustainable development and implementing the Millennium Development Goals and the Johannesburg Plan of Implementation. The international community has demonstrated its agreement, through numerous and varied international initiatives, that access to reliable, affordable, economically viable, socially acceptable and environmentally sound energy services is absolutely crucial in general and for developing countries in particular. Our States take part in all international efforts aimed at bridging the development gap between rich and poor States and enabling poor States to have access to energy resources while protecting the environment.

Maintaining the economic, social and environmental foundations for sustainable development requires a broad conception of international trade and finance and of energy and technology issues. While reaffirming the principle of sovereignty, it is important to continue to work towards an early conclusion of the Doha Round of development-oriented trade negotiations, as well as to provide developing States with the means to achieve development, including encouraging direct foreign investment in those States. It is equally important, in this regard, to stress the need for investment and trade policies to be fair and designed to facilitate technology transfer to developing States at reasonable cost and on affordable and cost-effective terms, in particular in the case of environmentally sound technologies.

The OPEC member States, while joining the international community in the efforts to achieve the Millennium Development Goals, take the interests of developing countries into account when making petroleum production and investment decisions, as well as when implementing development assistance

programmes and initiatives. At the first OPEC Summit in Algiers the OPEC Fund for International Development was established to provide development assistance to developing countries. The OPEC member States, acknowledging the strong interrelationships between energy and development and the potential for supporting both to achieve sustainable development, resolve to:

1. Emphasize that poverty eradication should be the overriding global priority and the impetus for local, regional and international efforts;

2. Continue working with the international community to foster the mutually interdependent foundations of sustainable development, namely economic development, social welfare and environmental protection;

3. Focus on the importance for the global community of achieving the goals of development, including those contained in Agenda 21, the United Nations Millennium Development Goals, the Johannesburg Plan of Implementation, the Monterrey Consensus and the New Partnership for Africa's Development (NEPAD) initiative;

4. Urge developed States to facilitate the access of developing countries to modern technologies that are reliable, affordable, economically viable, socially acceptable and environmentally sound;

5. Reaffirm the ongoing commitment of OPEC to providing development assistance through the OPEC Fund for International Development and through its member States' bilateral, regional and international development assistance channels;

6. Continue to link the programmes of OPEC member States' development assistance institutions, including those of the OPEC Fund for International Development, to the objectives of sustainable development and the eradication of energy poverty in the developing countries, and to study ways and means of enhancing these efforts in conjunction with the energy industry and financial institutions;

7. Direct Petroleum and Finance Ministers to study ways and means of increasing financial cooperation among OPEC member States, including proposals by some of the Heads of State and Government in their statements to the Summit.

Energy and the Environment

The process of energy production and consumption entails different local, regional and global environmental challenges. Human ingenuity and technological developments have in recent history played pivotal roles in addressing such challenges and providing the world with clean petroleum resources at reasonable and competitive prices to help realize global prosperity.

All the petroleum producing States are called upon to continue their central role in providing the world with its present and future energy needs, while taking into account, along with the international community, global environmental consequences connected with their use.

We note that while we share the international community's concern about the long-term challenge of climate change, at the same time we stress the interrelationship between that concern on the one hand, and ensuring secure and stable petroleum supplies to support global economic growth and development on the other. While we

share these global environmental concerns, such as concern over climate change, it is important to emphasize the role of Government policies, as well as those of innovation, markets and technological development in any local or global undertaking.

In the run-up to the 13th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) to be held in conjunction with the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol in Indonesia, an OPEC member State, as well as other relevant conferences and forums, we will continue to cooperate with the international community to explore these issues and challenges in a comprehensive, equitable and effective manner. The OPEC member States, while recognizing the interrelationships among energy production and consumption, environmental protection, economic growth and social development, resolve to:

1. Continue to respond to global environmental challenges and support international efforts to address these issues in the most cost-effective manner;

2. Promote cooperation in research and development in the petroleum field among the OPEC member States' science and technology centres, as well as cooperation with other international centres and the petroleum industry, with the objective of increasing the petroleum resource base, producing petroleum more efficiently, and continuing to develop cleaner fuels;

3. Affirm that forests play a crucial role in maintaining ecological balance, as carbon sinks and sources and reservoirs of greenhouse gases. In this regard, we are committed to improving the management, conservation and sustainable development of all types of forest. Cooperation and stepped up collective international efforts are needed in this area;

4. Reaffirm the core principle of common but differentiated responsibilities and respective capabilities in evaluating climate change policies and measures, including implementation of the United Nations Framework Convention on Climate Change and the Kyoto Protocol;

5. Ensure that all policies and measures taken to address climate change concerns are balanced and comprehensive, while taking into account their impact on developing States, including States heavily dependent on the production and export of fossil fuels;

6. Emphasize the importance of comprehensive approach to climate change that addresses all greenhouse gas sources, sectors and sinks and makes use of the relevant Kyoto Protocol mechanism;

7. Stress the importance of cleaner and more efficient petroleum technologies for the protection of the local, regional and global environment, and the importance of expediting the development of technologies that address climate change, such as carbon capture and storage.

Riyadh, 8 Dhu'lqa`dah 1428, corresponding to 18 November 2007

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Sixty-second session
Agenda items 17 and 18

The situation in the Middle East

Question of Palestine

Security Council
Sixty-third year

Identical letters dated 11 February 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Pakistan to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to enclose, in my capacity as Chair of the Organization of the Islamic Conference Group in New York, the final communiqué of the Expanded Extraordinary Meeting of the OIC Executive Committee at the level of Foreign Ministers on the latest developments in Palestine, in particular the siege imposed on the Gaza Strip. This communiqué was adopted on 3 February 2008 (see annex).

It is requested that the attached communiqué may kindly be issued as a document of the General Assembly, under agenda items 17 and 18, and of the Security Council.

(*Signed*) Farukh **Amil**
Ambassador
Acting Permanent Representative

08-23954 (E) 200208

Annex to the identical letters dated 11 February 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Pakistan to the United Nations addressed to the Secretary-General and the President of the Security Council

Final communiqué of the Expanded Extraordinary Meeting of the Executive Committee of the Organization of the Islamic Conference at the level of Foreign Ministers on the latest developments in Palestine, in particular the siege imposed on the Gaza Strip

The Expanded Extraordinary Meeting of the OIC Executive Committee at the level of Foreign Ministers, meeting on 3 February 2008 (25 Muharram 1429H), at the Headquarters of the General Secretariat of the Organization of the Islamic Conference (OIC) in the city of Jeddah, Kingdom of Saudi Arabia,

Proceeding from the principles and objectives enshrined in the OIC Charter and acting in accordance with the OIC resolutions on the cause of Palestine and Al-Quds Al-Sharif;

Hailing the steadfast resistance of the Palestinian people in the face of Israeli aggression and reaffirming its support of their just struggle in order to regain their inalienable and imprescriptible rights, including their right to self-determination and the establishment of their independent State of Palestine with Al-Quds as its capital, and their right to a just settlement of the issue of Palestinian refugees in accordance with United Nations General Assembly resolution 194 (III);

Reaffirming that the Palestinian territories occupied since 1967, including the Gaza Strip, the West Bank, and Al-Quds, constitute one single geographical unit;

Asserting that the persistent illegal Israeli violations and practices in the occupied Palestinian territories — including the assaults on the city of Al-Quds, the excavations and settlement activities; as well as the killings, assassinations, and incursions, most particularly the latest incursions and assaults in the West Bank and Gaza Strip, which have left in their trail hundreds of victims among Palestinian civilians — constitute gross violations of human rights and exacerbate the humanitarian conditions in the occupied Palestinian territories;

Noting that the blockade imposed by Israel on the Gaza Strip — including closing down the border crossings and cutting the flow of fuel supplies, food, and medicines as well as actions in the West Bank such as setting road blocks — constitutes collective punishment of the civilian population; provokes serious humanitarian repercussions; and is considered a war crime, crime against humanity and a blatant breach of international law;

Having taken cognizance of the report of the OIC Secretary-General on the grave conditions in Palestine and the blockade imposed by Israel on the Gaza Strip and having listened to the Minister of Foreign Affairs of Palestine and the interventions of Their Excellencies the Ministers and Heads of Delegations;

1. *Condemns* Israel for its despicable aggression on the Palestinian people and its illegal and illegitimate practices, most particularly the extrajudicial killings and assassinations, bombardment of homes and infrastructures, and the unjustifiable

blockade that Israel has imposed on the Gaza Strip as a collective punishment that comes under the category of war crimes. *Holds Israel*, the occupying force, *responsible* for the deteriorating humanitarian conditions in the Gaza Strip and asserts that these conditions are the direct result of Israel's persistent assault, closure of border crossings, and disruption of the flow of fuel, food, and medical supplies to the Palestinian people in the Gaza Strip.

2. *Expresses* its deep disappointment at the failure of the Security Council to assume its responsibility in addressing the humanitarian plight in Gaza, *calls upon* the international community to act swiftly and provide immediate protection for the Palestinian citizens in the occupied Palestinian territories and *tasks* the Islamic Group at the United Nations to pursue necessary measures to secure an adequate action by the United Nations.

3. *Welcomes* Human Rights Council resolution A/HRC/S-6/L.1, adopted at its extraordinary session on 23 January 2008 on the human rights violations emanating from the Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip. *Calls* for the implementation of its provisions, especially the call to provide immediate protection for Palestinian civilians in the occupied Palestinian territories, in compliance with human rights law and international humanitarian law.

4. *Welcomes* the initiative launched by the Secretary-General and aimed at drumming up essential support to secure the necessary humanitarian needs for the Palestinian people in the Gaza Strip; *expresses* its appreciation for the role assumed by civil society institutions in the Member States by lending their help to the population of the Gaza Strip; and *exhorts* them to provide greater humanitarian assistance.

5. *Urges* the Member States, the Islamic Development Bank, and private financial institutions to endeavour to provide urgent humanitarian assistance to the Palestinian people in order to alleviate their suffering, which has been created by Israel's violations, including its blockade, killings, and starvation.

6. *Reiterates* its appreciation and support of the efforts deployed by the Arab Republic of Egypt in order to alleviate the Palestinian people's suffering and to find a way out of the current humanitarian crisis. The meeting *also expresses* its support for the call made by Egyptian President Mohamed Hosni Mubarak for the Palestinian factions to expeditiously end their differences and resume the national dialogue on foundations that secure Palestinian national unity and serve the Palestinian people's higher interests in a way that is conducive to the reinstatement of the legitimate authority's role in the Gaza Strip as soon as possible.

7. *Welcomes* the Palestinian Authority's declaration that it was ready to assume the responsibility for operating all Gaza Strip crossings; and *calls on* the parties concerned to resume the application of internationally agreed arrangements so as to ensure the reopening of the Gaza Strip crossings, including the Rafah crossing, and so as to prevent the recurrence of the current humanitarian crisis in the future.

8. *Reaffirms* its unequivocal support for the establishment of an independent Palestinian State with full sovereignty over all Palestinian territories occupied since 1967, and with Al-Quds as its capital. *Reiterates* the illegality of Israeli measures aimed at judaizing the city of Al-Quds and altering its

geo-demographic character as well as the illegality of the assaults and excavations being implemented within the vicinity of the Holy Al-Aqsa Mosque.

9. *Mandates* the Secretary-General, in coordination with the Chairs of the Summit and Foreign Ministers Conference and Palestine, to take the necessary steps in order to contact influential international stakeholders and the United Nations with a view to lifting the blockade on the Gaza Strip and resolving the ensuing humanitarian crisis.

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Sixty-second session
Agenda item 108
Measures to eliminate international terrorism

Letter dated 12 February 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Peru to the United Nations addressed to the Secretary-General

Upon instructions of my Government, I have the honour to forward a copy of the letter dated 1 February 2008 addressed to you from the President of the Peruvian Congress, Dr. Luis Gonzáles Posada (see annex), transmitting to you the Declaration entitled "Solidarity with Colombia", issued this month by the Congress of Peru. It expresses a clear demand made by the Peruvian legislature aimed at the liberation of all persons who have been kidnapped by the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN) and other criminal groups. This Declaration includes also a firm condemnation of such kidnappings as terrorist acts.

I would greatly appreciate it if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 108.

(*Signed*) Luis Enrique **Chávez**
Ambassador
Chargé d'affaires a.i.

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Annex to the letter dated 12 February 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Peru to the United Nations addressed to the Secretary-General

[Original: Spanish]

I have the pleasure to transmit to you herewith a Declaration entitled "Solidarity with Colombia", which was endorsed by legislators representing all accredited political parties in the Congress of the Republic of Peru (see appendix).

This Declaration conveys our demand for the immediate and unconditional release of all persons who have been kidnapped by the Fuerzas Armadas Revolucionarias de Colombia (FARC), the Ejército de Liberación Nacional (ELN) and other criminal groups.

Kidnapping is a crime against humanity, as established in various international instruments. It affects individuals' right to life, liberty, dignity and physical and psychological integrity and has a severe impact on their families and on society as a whole.

Accordingly, the Declaration, while asking the legislative bodies of the hemisphere and the Organization of American States to show their solidarity in calling for the release of kidnapped persons, refers to the perpetrators of these acts and their accomplices as terrorists.

I should be grateful if you would have the Declaration circulated as an official document for attention and any related action by the countries members of your Organization.

Accept, Sir, the renewed assurances of my highest consideration.

(*Signed*) Luis **Gonzáles Posada Eyzaguirre**
President
Congress of the Republic

Appendix

[Original: Spanish]

Solidarity with Colombia

Whereas the promotion and protection of the individual's right to life, liberty, dignity and physical and psychological integrity are supreme values of the State and society;

Whereas kidnapping is a crime against humanity that violates the basic rights of its victims and has a severe impact on their families and on society as a whole;

Whereas this criminal offence is in flagrant violation of the Charter of the United Nations and the Charter of the Organization of American States (OAS), as well as the principles contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in a number of international human rights instruments, including the 1948 Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the International Covenant on Civil and Political Rights, all of which have been signed by Peru;

Whereas kidnapping or any form of arbitrary deprivation of liberty is an international crime under the provisions of the Rome Statute of the International Criminal Court, giving rise in all States to the obligation to cooperate in investigating and punishing those responsible for this offence;

Whereas the sister Republic of Colombia recorded, between 1996 and 2007, a total of 23,356 kidnappings targeting men, women, older persons and children, both civilian and military, of which 12,168 cases were perpetrated by the Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Ejército de Liberación Nacional (ELN);

Whereas, out of the total number of persons kidnapped by FARC and ELN, 492 have died during their captivity or have been killed by these terrorist groups and 1,184 are still illegally deprived of their liberty, surviving in cruel, inhuman and degrading conditions and in a situation of imminent danger to their lives;

Whereas, in view of the seriousness of these circumstances, it is necessary for the legislative bodies of the Americas to publicly repudiate these criminal acts and to lead a joint effort to secure the immediate and unconditional release of all persons who have been kidnapped in Colombia;

The Congress of the Republic of Peru, for these reasons,

Agrees to:

1. Express its solidarity with all victims of kidnapping and of cruel, inhuman and degrading treatment perpetrated by FARC, ELN and other criminal groups, as well as with their families and the sister Republic of Colombia;

2. Declare its satisfaction at the recent release of Clara Rojas and Consuelo González, while at the same time reaffirming its demand for the total, immediate and unconditional release of all persons kidnapped by FARC, ELN and other criminal groups;

3. Express the strongest condemnation of those who attempt to impose an ideology by means of violence and terrorism, thereby violating human rights and democratic principles;

4. Propose that the legislative bodies of the Americas join in an effort of solidarity aimed at the immediate and unconditional release of all kidnapped persons, as well as an initiative to express rejection and condemnation of the perpetrators and planners of kidnappings and other crimes against human liberty, life and integrity;

5. Support the peaceful march to express worldwide repudiation of FARC and of kidnapping, which will be held on 4 February 2008 in more than 60 cities in Colombia and the world;

6. Request OAS to convene a special meeting on the issue of kidnapping to enable the countries of the inter-American system to adopt urgent measures leading to the immediate and unconditional release of kidnapped persons, to which end it is essential to reaffirm that the perpetrators of this crime and their accomplices are categorized as terrorists;

7. Call upon the specialized bodies of the United Nations and OAS to strengthen their support for peace initiatives, in the framework of the international obligations undertaken by Colombia and reflected in the laws of that country. In addition, these bodies are requested to consider the possibility of appointing a follow-up commission to support initiatives taken by the Government of Colombia to secure the release of kidnapped persons;

8. Express to the Government of the Republic of Colombia and to its Congress the support of Peru's parliamentary representatives for the efforts they are making to combat violence and free the individuals who are still in captivity.

(*Signed*) Luis **Gonzáles Posada Eyzaguirre**
President
Congress of the Republic